

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

07-cr-58-bbc
11-cv-36-bbc

v.

CARLTON EMBRY,

Defendant.

Defendant Carlton Embry has filed a notice of appeal from the March 28, 2011 order denying his § 2255 motion and denying a certificate of appealability.

Defendant's notice of appeal was not accompanied by the \$455 fee for filing an appeal. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I construe it as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915. According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed." Defendant had appointed counsel during the criminal proceedings against him and I do not intend to

certify that the appeal is not taken in good faith. Defendant's challenge to his sentence is not wholly frivolous. A reasonable person could suppose that it has some merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

ORDER

IT IS ORDERED that defendant Carlton Embry's request for leave to proceed in forma pauperis on appeal is GRANTED. His request for a certificate of appealability was previously denied in the March 28, 2011 order.

Entered this 29th day of April, 2011.

BY THE COURT:

/s/
BARBARA B. CRABB
District Judge